

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Darrian Rachel,
Plaintiff

vs

Case No. 1:09-cv-424-MRB-TSH
(Barrett, J.; Hogan, M. J.)

United States Postal Service,
Defendant

REPORT AND RECOMMENDATION

Pro se plaintiff Rachel initiated this action in Hamilton County, Ohio, Municipal Court with the filing of a small claims complaint on May 21, 2009. (Doc. 2, state court Complaint). On June 18, 2009, defendant the United States Postal Service removed the action to this Court. (Doc. 1, Notice of Removal). On June 30, 2009, defendant moved to dismiss the complaint in its entirety for lack of jurisdiction. (Doc. 3). On October 21, 2009, this Court issued a Show Cause Order directing plaintiff to file a response to defendant's motion. (Doc. 4). In this Court's October 21, 2009 Order to Show Cause, the Court cautioned that failure to respond to the Order would result in a recommendation to the District Court that the action be dismissed for lack of prosecution and for failure to comply with this Court's orders. To date, plaintiff has not filed a response to defendant's motion, nor a response to this Court's Order.

The Federal Rules of Civil Procedure provide that:

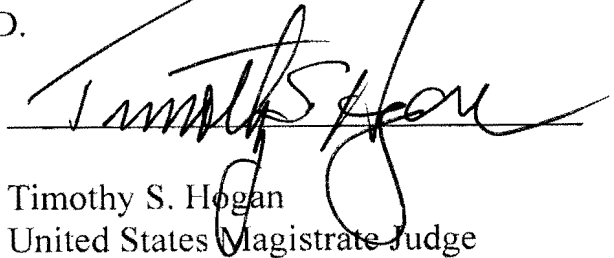
For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any

dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

Fed. R. Civ. P. 41(b). Having failed to respond to defendant's motion and this Court's Order, plaintiff has failed to prosecute this case. He was cautioned that failure to respond would result in a recommendation that this action be dismissed. The Court now so recommends.

Furthermore, dismissal on the merits is warranted by the law and argument set forth in defendant's motion.

IT IS THEREFORE RECOMMENDED this action be DISMISSED from the docket of this Court pursuant to Fed. R. Civ. P. 41(b), or in the alternative, that defendant's motion to dismiss be GRANTED.



Timothy S. Hogan
United States Magistrate Judge

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NOTICE

Attached hereto is the Report and Recommended decision of the Honorable Timothy S. Hogan, United States Magistrate Judge, which was filed on 11/13/09. Any party may object to the Magistrate's findings, recommendations, and report within (10) days after being served with a copy thereof or further appeal is waived. *See United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Such parties shall file with the Clerk of Court, and serve on all Parties, the Judge, and the Magistrate, a written Motion to Review which shall specifically identify the portions of the proposed findings, recommendations, or report to which objection is made along with a memorandum of law setting forth the basis for such objection, (such parties shall file with the Clerk a transcript of the specific portions of any evidentiary proceedings to which an objection is made).

In the event a party files a Motion to Review the Magistrate's Findings, Recommendations and Report, all other parties shall respond to said Motion to Review within ten (10) days after being served a copy thereof.

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1:09 cv 424 (Doc. 6)